

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER:

0 1 — 0 1 2

2. STATE:

Minnesota

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL
SECURITY ACT (MEDICAID)TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

July 1, 2001

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

42 CFR 447.252

7. FEDERAL BUDGET IMPACT:

a. FFY '01 \$ 482

b. FFY '02 \$3,212

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Att. 4.19-D (ICF/MR), pp. 101-239 & Supp. 1

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):Att. 4.19-D (ICF/MR), pp. 101-237 &
Supp. 1

10. SUBJECT OF AMENDMENT:

Methods and Standards for Determining Payment Rates for Services Provided by ICFs/MR that
are not State-Owned

11. GOVERNOR'S REVIEW (Check One):

☒ GOVERNOR'S OFFICE REPORTED NO COMMENT☐ OTHER, AS SPECIFIED:☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

Mary B. Kennedy

14. TITLE:

Medicaid Director

15. DATE SUBMITTED:

8/27/01

16. RETURN TO:

Stephanie Schwartz
Federal Relations
Minn. Department of Human Services
444 Lafayette Road North
ST. Paul, MN 55155-3853**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED:

8/30/01

18. DATE APPROVED:

10/31/01

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

July 1, 2001

20. SIGNATURE OF REGIONAL OFFICIAL:

Cheryl A. Harris

21. TYPED NAME:

Cheryl A. Harris

22. TITLE: Associate Regional Administrator
Division of Medicaid and Children's Health

23. REMARKS:

MINNESOTA
MEDICAL ASSISTANCE
Federal Budget Impact of Proposed State Plan Amendment TN 01-12
Attachment 4.19-D (ICF/MR)

Effective July 1, 2001, the following changes are made to ICF/MR payment rates:

- §1.030, Definition of occupancy report: Because the Department does not require ICFs/MR to report variable rate information on the occupancy report, this requirement is deleted.
- §1.030, Definition of variable rate: A variable rate is approved by the Department when there is a documented increase in the resource needs of a resident, or when a person is admitted who requires additional resources. Resource needs directly attributable to a person that may be considered include direct staff hours and human resources. Because these mean the same thing, "human resources" is deleted. Pursuant to Laws of Minnesota 2001, chapter 203, section 13 (Minnesota Statutes, §256B.5013, subd. 1).
- §6.010, item A, subitems (5) and (6): ICFs/MR receive a 3.5 percent rate increase to the total operating payment rate. Two-thirds of the rate increase must be used to increase the wages, benefits, and pay associated costs of employees except administrative and central office employees. One-third of the rate increase must be used for operating costs. Pursuant to Laws of Minnesota 2001, First Special Session, chapter 9, article 5, section 30 (Minnesota Statutes, §256B.5012, subd. 4).
- §10.100: After the sale, closure or transfer of an ICF/MR in receivership, the Department may recover amounts that were paid as payment rate adjustments. New language clarifies that the recovery is determined through a review of actual costs and resident days in the receivership period and adds that:
 1. the costs the Department finds to be allowable are divided by the actual resident days for the receivership period. This rate is compared to the rate paid throughout the receivership period, with the difference multiplied by resident days, being the amount to be repaid to the Department. Pursuant to Laws of Minnesota 2001, First Special Session, chapter 9, article 3, section 2 (Minnesota Statutes, §245A.13, subd. 8).
 2. allowable costs are determined by the Department as those ordinary, necessary, and related to resident care by prudent and cost-conscious management. Pursuant to Laws of Minnesota 2001, First Special Session, chapter 9, article 3, section 2 (Minnesota Statutes, §245A.13, subd. 8).
- §11.060: This is deleted, because variable rate adjustments replace payments for persons with special needs for crisis intervention services. This is already a part of Minnesota's ICF/MR rate methodology State plan; see §11.020, item A, subitem (3). Pursuant to Laws of Minnesota 2001, chapter 203, section 13 (Minnesota Statutes, §256B.5013, subd. 1).

Federal Budget Impact

TN 01-12

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The fiscal impact was measured by estimating the aggregate annual difference in the facilities' rates between the October 1, 2000-December 31, 2001 and the January 1, 2002-December 31, 2002 rate year.

	(in 1000's)	
	<u>FFY 2001</u>	<u>FFY 2002</u>
Estimate State Share Cost/(Savings) (eff. 7/1/01)	\$460,667	\$3,212,153
State Share Percentages (Blended FFP %'s)	48.89%	59%
Total Estimated MA Cost/(Savings) (State Share estimate divided by State Share %)	\$942,251	\$6,424,307
Federal Share Percentages	51.11%	50.00%
Estimated Federal Share on SFY Basis	\$481,585	\$3,212,153

8.040	Attorney's fees and costs
8.050	Legal and related expenses
Section 9.000	Voluntary receivership
9.010	Receivership agreement
9.020	Management agreement
9.030	Rate adjustment
9.040	Controlling individuals; restrictions on licensure
9.050	Liability
9.060	Liability for financial obligations
9.070	Physical plant of the residential program
9.080	Receivership costs
Section 10.000	Involuntary receivership
10.010	Application
10.020	Appointment of receiver
10.030	Powers and duties of the receiver
10.040	Liability and liability for financial obligations
10.050	Physical plant of the residential program
10.060	Fee
10.070	Termination
10.080	Emergency procedure
10.090	Rate recommendation
10.100	Adjustment to the rate
10.110	Receivership costs
Section 11.000	Special situations
11.010	Closure
11.020	Variable rate adjustments
11.030	Temporary adjustments to address occupancy and access
11.040	Other payment rate adjustments
11.050	Relocation
11.060	Payment for persons with special needs for crisis intervention services
Attachment 1	Methods and standards for determining payment rates prior to October 1, 2000

**METHODS AND STANDARDS FOR DETERMINING PAYMENT RATES
FOR SERVICES PROVIDED BY INTERMEDIATE CARE FACILITIES FOR
PERSONS WITH MENTAL RETARDATION (ICFs/MR) THAT ARE NOT
STATE-OWNED**

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**METHODS AND STANDARDS FOR DETERMINING PAYMENT RATES
FOR SERVICES PROVIDED BY INTERMEDIATE CARE FACILITIES FOR
PERSONS WITH MENTAL RETARDATION
(ICFs/MR) THAT ARE NOT STATE-OWNED**

SECTION 1.000 INTRODUCTION.

Section 1.010 **General purpose.** The purpose of Minnesota's methods and standards for determining medical assistance payment rates for ICFs/MR that are not state-owned is to provide for rates in conformity with applicable state and federal laws, regulations and quality and safety standards. Minnesota has in place a public process that complies with the requirements of Section 1902(a)(13)(A) of the Social Security Act. In determining the rates, the Department of Human Services takes into account the provider's historical costs, the size of the facility, and other factors.

Facilities participating in the Minnesota Medical Assistance Program are paid by a prospective rate-setting methodology, based upon a contracting system. This methodology, established in Minnesota statutes, is described in this attachment.

Not all facilities are paid pursuant to this Attachment. Facilities receiving payment based on a closure, downsizing or relocation agreement before October 1, 2000 are paid pursuant to Attachment 1, pages 130-237, and Supplement 1. Facilities that received rate adjustments before October 1, 2000 carry the adjustments as of October 1, 2000, and are paid a blended rate based on the methodology in Attachment 1, pages 130-237 + Supplement 1 and the payment methodology described on pages 103-129. When the rate adjustments are finalized, the finalized rates are instituted as ongoing rates pursuant to this Attachment.

Facilities contract with the Department in order to receive payment. Contracts include descriptions of payments that may be modified when significant changes occur in residents' needs, the establishment and use of a quality improvement plan, appropriate and necessary statistical information required by the Department, annual aggregate facility financial information, and additional requirements for facilities not meeting the standards set forth in each contract.

Section 1.020 **Rate methodology.** The total payment rate for ICFs/MR in existence as of October 1, 2000, is the sum of the operating payment rate and the property payment rate.

Section 1.030 **Definitions.** For the purposes of Sections 2.000 to ~~11.060~~ 11.050, the following terms have the meanings given them in this section.

Capacity days. "Capacity days" means the total number of licensed beds in the facility multiplied by the number of days in the reporting year.

Capital assets. "Capital assets" means a facility's land, physical plant, land improvements, depreciable equipment, leasehold improvements, capitalized improvements and repairs, and all additions to or replacement of those assets.

Capital debt. "Capital debt" means a debt incurred by the facility for the purpose of purchasing a capital asset, to the extent that the proceeds of the debt were actually applied to purchase the capital asset including points, financing charges, and bond premiums or discounts. Capital debt includes debt incurred for the purpose of refinancing a capital debt.

Class A beds. "Class A beds" means beds licensed for ambulatory and mobile persons who are capable of taking appropriate action for self-preservation under emergency conditions as determined by state and federal licensing law.

Class B beds. "Class B beds" means beds for ambulatory, nonambulatory, mobile, or nonmobile persons who are not mentally or physically capable of taking appropriate action for self-preservation under emergency conditions as determined by state and federal licensing law.

Commissioner. "Commissioner" means the commissioner of the Minnesota Department of Human Services.

Department. "Department" means the Minnesota Department of Human Services.

Depreciable equipment. "Depreciable equipment" means the standard moveable resident care equipment and support service equipment generally used in an ICF/MR. Depreciable equipment includes the equipment specified in the major moveable equipment table of the depreciation guidelines.

Depreciation guidelines. "Depreciation guidelines" means The Estimated Useful Lives of Depreciable Hospital Assets, issued by the American Hospital Association, 840 North Lake Shore Drive, Chicago, Illinois (Chicago: 1983). The depreciation guidelines are incorporated by reference and are available for reference at the Minnesota State Law Library, Minnesota Judicial Center, 25 Constitution Avenue, Saint Paul, Minnesota, 55155. Only the 1983 publication will be used and will not change.

Desk audit. "Desk audit" means the Department's review and analysis of required reports, supporting documentation, and work sheets submitted by the provider.

Direct cost. "Direct cost" means a cost that can be identified within a specific general cost category without the use of allocation methods.

Facility. "Facility" or "CF/MR" means a program licensed to serve persons with mental retardation or related conditions under state laws, and a physical plant licensed as a supervised living facility under state laws, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded.

Fringe benefits. "Fringe benefits" means workers' compensation insurance (including self-insurance plans), group health insurance, disability insurance, dental insurance, group life insurance, and retirement benefits or plans.

Leasehold improvement. "Leasehold improvement" means an improvement to property leased by the provider for the use of the facility that reverts to the owner of the property upon termination of the lease.

Medical assistance program. "Medical assistance program" means the program that reimburses the cost of health care provided to eligible residents pursuant to state and federal law.

Modified property payment rate. "Modified property payment rate" means the actual property payment rate exclusive of the effect of gains or losses on disposal of capital assets or adjustments for excess depreciation claims.

Necessary service. "Necessary service" means a function pertinent to the facility's operation that if not performed by the assigned individual would have required the provider to employ or assign another individual to perform it.

Occupancy report. "Occupancy report" means the report submitted monthly by a facility indicating bed use data for the preceding month. Examples of data are: resident days, leave days, vacancies, and resident changes, ~~and variable rate information.~~

Payroll taxes. "Payroll taxes" means the employer's share of social security withholding taxes, and state and federal unemployment compensation taxes or costs.

Physical plant. "Physical plant" means the building or buildings in which a program licensed to provide services to persons with mental retardation or related conditions under state law is located, and all equipment affixed to the building and not easily subject to transfer as specified in the building and fixed equipment tables of the depreciation guidelines, and auxiliary buildings in the nature of sheds, garages, and storage buildings located on the same

site if related to resident care, and the allocated portion of office space if the office is located in that facility. Physical plant does not include buildings or portions of buildings used by central, affiliate, or corporate offices if those offices are not located in that facility.

Private paying resident. "Private paying resident" means a facility resident whose care is not paid for by the medical assistance program, cost of care program, or the Community Social Services Block Grant for the date of service.

Program. "Program" means those functions and activities of the facility that contribute to the care, supervision, developmental growth, and skill acquisition of the residents under state and federal laws.

Provider. "Provider" means the corporation, governmental unit, partnership, person, or persons licensed to operate the facility, which controls the facility's operation, incurs the costs reported, and claims reimbursement under Sections 1.010 to ~~11.060~~ 11.050 or the care provided in the facility.

Provider group. "Provider group" means a parent corporation, any subsidiary corporations, partnerships, management organizations, and groups of facilities operated under common ownership or control that incurred the costs shown on the income and expense report that are claimed for reimbursement under Sections 1.010 to ~~11.060~~ 11.050.

Quality improvement plan. "Quality improvement plan" means the document submitted by a facility to the Department describing the facility's quality improvement process.

Rate adjustment. "Rate adjustment" means a rate change granted by the Department. The amount available for rate adjustments is set by legislative appropriation.

Rate year. For the initial year, "rate year" means the period for which the total payment rate is effective, from October 1, 2000 through December 31, 2001. Thereafter, "rate year" means a calendar year.

Related organization. "Related organization" means a person that furnishes goods or services to a facility and that is a close relative of a provider or a provider group, an affiliate of a provider or provider group, or an affiliate of a close relative of an affiliate of a provider or provider group. For the purposes of this definition, the following terms have the meanings given them.

A. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

B. "Person" means an individual, a corporation, a partnership, an association, a trust, an unincorporated organization, or a government or political subdivision.

C. "Close relative of an affiliate of a provider or provider group" means an individual whose relationship by blood, marriage, or adoption to an individual who is an affiliate of a provider or provider group is no more remote than first cousin.

D. "Control" including the terms "controlling", "controlled by", and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management, operations, or policies of a person, whether through the ownership of voting securities, by contract or otherwise.

Repair. "Repair" means the cost of labor and materials needed to restore an existing capital asset to sound condition after damage or malfunction or to maintain an existing capital asset in a usable condition.

Reporting year. "Reporting year" means the period from January 1 to December 31 immediately preceding the rate year, for which the provider submits its income and expense report.

Resident day. "Resident day" means a day on which services provided to residents are rendered and billable, or a day for which a bed is held and billed.

Statewide advisory committee. "Statewide advisory committee" means the committee charged with reviewing county and provider proposals and making recommendations to the Department regarding facility payment rate adjustments. The committee uses established criteria for ranking proposals in order to make recommendations.

Total payment rate. "Total payment rate" means the amount established by the commissioner to reimburse the provider for service provided to each resident. The total payment rate is calculated by adding the operating payment and the property payment rate.

Variable rate. A rate approved by the Department, upon the recommendation of the county of financial responsibility, when there is a documented increase in the resource needs of a resident, or when a person is admitted who requires additional resources. Resource needs directly attributable to a person that may be considered include increased direct staff hours, and other specialized services, and equipment, ~~and human resources~~. The variable rate must be applied to expenses related to increased direct staff hours and other specialized services, equipment, and human resources. Variable rate adjustments may be approved for up to one year. The need for a variable rate must be reviewed at the end of the anticipated duration of

need but at least yearly.

SECTION 2.000 GENERAL REPORTING REQUIREMENTS.

Section 2.010 Required income and expense reports. By April 30 of each year, the provider must submit an annual income and expense report on the form prescribed by the Department in order to receive medical assistance payments. The reports must cover the reporting year ending the previous December 31.

Section 2.020 Required information. A complete income and expense report contains the following items:

A. Salaries and related expenses, including salaries to program, administrative, and support staff, payroll taxes and fringe benefits, and training.

B. General operating expenses, including supplies, repairs, purchased services and consultants, utilities, food, licenses and fees, real estate taxes, insurance, and working capital interest.

C. Property-related expenses, including real estate taxes, depreciation, capital debt interest, rent and leases, and property insurance.

D. Facility income, including receipt of all income from accounts receivable related to facility operations.

E. Annual resident days.

Section 2.030 Occupancy reports.

A. A facility must maintain and submit monthly bed use data. When a facility reports a variable rate, monthly bed use data is used to track the amount and time span of rate adjustments. The total payments made to a facility may be adjusted based on concurrent changes in the needs of recipients that are covered by a variable rate adjustment. Any adjustment for multiple resident changes does not result in a decrease to the facility base rate.

B. Bed use data will also indicate leave days and vacancies for the purpose of adjusting the rate for access according to Section 11.030.

Section 2.040 Deadlines, extensions, and rejections.

A. A facility that terminates participation in the Medical Assistance Program during a reporting year must submit the required annual income and expense report covering the period from January 1 of that reporting year to the date of termination. The income and expense report must be submitted within four months after termination.

B. The Department may reject any annual income and expense report filed by a facility that is incomplete or inaccurate, or for which supplemental information is required. In these cases, the Department will inform the facility what additional information is required. The facility will be given a reasonable amount of time to supply the information.

Failure to file the required income and expense report and other required information constitutes a material breach of the contract, allowing the Department to pursue termination of the contract.

Section 2.050 Audits.

The Department will subject income and expense reports and supporting documentation to desk audits. If the audits reveal inadequacies in facility record keeping or accounting practices, the Department may require the facility to engage competent professional assistance to correct those inadequacies within 90 days of the written notification by the Department.

Section 2.060 False reports. If a provider knowingly supplies inaccurate or false information on an income and expense report, the Department will exercise its options under the breach of terms provisions in its contract with the facility.

Section 2.070 Adequate documentation. A facility must keep adequate documentation.

A. In order to be considered adequate, documentation must:

- (1) be maintained in orderly, well-organized files;
- (2) not include documentation of more than one facility in one set of files unless transactions may be traced by the Department to the facility's annual income and expense report;
- (3) include a paid invoice or copy of a paid invoice with date of purchase, vendor name and address, purchaser name and delivery address, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a

breakdown of any allocation of costs between accounts or facilities. If any of the information to be listed on the invoice is not available, the providers must document their good faith attempt to obtain the information;

(4) include copies of all written agreements and debt instruments to which the facility is a party and any related mortgages, financing statements, and amortization schedules to explain the facility's costs and revenues;

(5) if a cost or revenue item is not documented under subitem (3) or (4), the facility must document the amount, source, and purpose of the item in its books and ledgers following generally accepted accounting principles and in a manner providing an audit trail; and

(6) be retained by the facility to support the five most recent annual income and expense reports submitted to the Department. The Department may extend the period of retention if the desk audit was postponed because of inadequate record keeping or accounting practice, or if the records are necessary to resolve a pending appeal.

B. Providers must document all consultant, professional, or purchased service contracts. They must maintain copies of all contracts and invoices relating to consultant, professional, or purchased services. These documents must include the name and address of the vendor or contractor, the name of the person who actually performed the services, the dates of service, a description of the services provided, the unit cost, and the total cost of the service.

C. Payroll records must be maintained by a facility and must show the amount of compensation paid to each employee and the days and hours worked. Complete and orderly cost allocation records must be maintained for cost allocations made among cost categories or facilities.

SECTION 3.000 QUALITY IMPROVEMENT PLAN.

A. Except for the initial rate year, facilities must submit quality improvement plans to the Department by the end of each rate year. For the initial rate year, quality improvement plans must be submitted by December 31, 2000.

B. Each quality improvement plan must identify a minimum of one performance measure on which to focus during the contract period.

C. Elements of a quality improvement plan:

- (1) a facility-specific quality improvement team;
- (2) area(s) of need (and why), including the strategies used to identify the causes;
- (3) definition of the quality improvement goal or benchmark;
- (4) identified data sources;
- (5) plan of action and strategies to address the problem;
- (6) summarized and interpreted data; and
- (7) evaluation of the results, including how the quality improvement plan is communicated to residents, staff, and residents' families, and how the process is monitored and changed as needed.

SECTION 4.000 CAPITALIZATION.

A. The cost of purchasing a capital asset listed in the depreciation guidelines must be capitalized. The cost of purchasing any other capital asset not included in the depreciation guidelines must be capitalized if the asset has a useful life of more than two years and costs more than \$500.

B. Construction period interest expense, feasibility studies, and other costs related to the construction period must be capitalized and depreciated.

C. Items, such as land improvements whose maintenance or construction are not the responsibility of the provider, land, and goodwill, are not considered depreciable capital assets.

SECTION 5.000 DETERMINATION OF PROPERTY PAYMENT RATE.

Section 5.010 **Depreciation.** Allowable depreciation expense is determined according to the following.

The facility's historical capital costs are limited by subitems (1) to (5).

(1) The facility's total historical capital costs of capital assets, as determined in item A, must not exceed the maximum limits established annually per bed for licensed Class A beds and for licensed Class B beds, as follows:

<u>Calendar Year</u>	<u>Class A</u>	<u>Class B</u>
Prior to 1974	\$11,000	-
1974	13,000	-
1975	14,820	-
1976	15,413	-
1977	16,406	-
1978	18,109	-
1979	20,010	-
1980	25,194	\$29,452
1981	28,016	32,751
1982	29,165	34,094
1983	29,952	35,015
1984	30,012	35,085
1985	31,723	37,085
1986	32,357	37,827
1987	33,263	38,886
1988	34,527	40,364
1989	34,700	40,566
1990	36,262	42,392
1991	36,987	43,240
1992	37,542	43,889
1993	38,180	44,635
1994	39,173	45,796
1995	40,779	47,674
1996	42,247	49,390
1997	43,007	50,279
1998	44,125	51,586
1999	45,140	52,772
2000	47,081	55,041
<u>2001</u>	<u>48,399</u>	<u>56,582</u>

Newly constructed or newly established facilities that are certified for medical assistance on or after May 1, 1990 will be allowed for capital asset investment per bed limit as follows:

	<u>Class B Residential</u>	<u>Class B Institutional</u>
1990	\$44,800	\$45,200
1991	45,696	46,104
1992	46,381	46,796
1993	47,169	47,592
1994	48,395	48,829
1995	50,379	50,831
1996	52,193	52,661
1997	53,132	53,609
1998	54,513	55,003
1999	55,767	56,268
2000	58,165	58,688
<u>2001</u>	<u>60,666</u>	<u>61,212</u>

(2) The limitations in subitem (1) are adjusted on January 1 each year by the percentage increase in the construction index published by the Bureau of Economic Analysis of the United States Department of Commerce. Facilities entering the Medical Assistance Program are subject to the limitation in effect at the time the facility entered the program.

(3) For purposes of this item, the facility's total historical capital cost of capital assets must not include the facility's allowable portion of capital assets of the central, affiliated, or corporate office.

Section 5.020 Limitations on interest rates. The Department limits interest rates according to items A to C.

A. Except as provided in item B, the effective interest rate of each allowable capital debt, including points, financing charges, and amortization of bond premiums or discounts, entered into after December 31, 1985, is limited to the lesser of subitems (1), (2), and (4) for all capital debt except motor vehicles. The limitations on motor vehicle capital debt is the lesser of subitems (1), (3), and (4). The limits are:

(1) the effective interest rate on the capital debt;

(2) a rate 1.5 percentage points above the posted yield for standard conventional fixed rate mortgages of the Federal Home Loan Mortgage Corporation as published in the *Wall Street Journal* and in effect on the first day of the month in which the capital debt is incurred;

(3) a rate three percentage points above the prime rate as published in the *Star Tribune* and in effect on the first day of the month in which the capital debt is incurred; or

(4) 16 percent.

B. Variable or adjustable interest rates for allowable capital debts are allowed subject to the limits in item A. For each allowable capital debt with a variable or adjustable interest rate, the effective interest rate is computed by dividing the interest expense including points, financing charges, and amortization of bond premiums or discounts for the reporting year by the average allowable capital debt. The average allowable capital debt is computed as in Section 5.030.

C. The effective interest rate for capital debts incurred before January 1, 1984, is allowed in accordance with the laws and rules in effect at the time the capital debt was entered into provided the effective interest rate is not in excess of what the borrower would have had to pay in an arms-length transaction in the market in which the capital debt was incurred. For rate years beginning after September 30, 1987, the effective interest rate for debts incurred before January 1, 1984, is subject to the limit in item A, subitem (4), unless the refinancing of the capital debt is prohibited by the original terms of the agreement with the lender.

Section 5.030 Allowable capital debt interest expense. Allowable capital debt interest expense is determined in accordance with items A to D.

A. For relocations, a facility that has a restricted fund must use its restricted funds to purchase or replace capital assets to the extent of the cost of those capital assets before it borrows funds for the purchase or replacement of those capital assets. For purposes of this section, a restricted fund is a fund whose use is restricted by the donor, the nonprofit facility's board, or any other nonrelated organization, to the purchase or replacement of capital assets.

B. For relocations, construction period interest expense must be capitalized as a part of the cost of the physical plant. The period of construction extends to the earlier of either the first day a medical assistance recipient resides in the facility, or the date the facility is certified to receive medical assistance recipients, except that the period of construction cannot extend beyond the date on which the project is complete. A project is complete when a certificate of occupancy is issued or, if a certificate of occupancy is not required, when the project is available for use.

C. For relocations, interest expense for capital debts entered into after December 31, 1983, is allowed for the portion of the capital debt that together with all other outstanding capital debts does not exceed 100 percent of the historical capital cost of the facility's capital

assets subject to the limitations in Section 5.010.

D. For relocations, interest expense for capital debts on capital assets acquired, leased, constructed, or established after December 31, 1983, is allowable only for the portion of the capital debt that does not exceed 80 percent of the historical capital cost of the capital asset including points, financing charges, and bond premiums or discounts subject to the limitations in Section 5.010.

SECTION 6.000 DETERMINATION OF TOTAL PAYMENT RATE.

Section 6.010 **Total payment rate.** The total payment rate is the sum of the operating payment rate and the property payment rate.

A. Operating payment rate.

(1) The operating payment rate is the facility's total payment rate in effect on September 30, 2000, minus the property rate. It includes the efficiency incentive in effect as of September 30, 2000.

(2) Within the limits of appropriations for this purpose, the operating payment rate is increased for each rate year by the annual percentage change in the Employment Cost Index for Private Industry Workers--Total Compensation in the second quarter of the calendar year preceding the start of the rate year. For the initial rate year, the percentage change is based on the percentage change in the Employment Cost Index for Private Industry Workers--Total Compensation for the 15-month period from October 1, 2000 through December 31, 2001, as forecast by Data Resources, Inc.

(3) The operating payment rate is adjusted to reflect an occupancy rate equal to 100 percent of a facility's capacity days as of September 30, 2000.

(4) For the initial rate year, the Department will make an adjustment to the operating payment rate for a facility that submits a plan, approved by the Department, in accordance with unit (b). Operating costs will be separated into compensation-related costs and all other costs. Compensation-related costs means allowable program operating cost category employee training expenses and allowable salaries, payroll taxes, and fringe benefits for all employees except the administrator and central office staff.

(a) Facilities that have rates governed by closure agreements, receivership agreements, or interim rates are not eligible for these adjustments.

(b) The payment rate is increased by:

1) 6.6 percent of compensation-related costs, 45 percent of which must be used to increase the per-hour pay rate of all employees except administrative and central office employees by an equal dollar amount and to pay associated costs for FICA, the Medicare tax, workers' compensation premiums, and federal and state unemployment insurance provided that this portion of the compensation-related increase must be used only for wage increases implemented on or after October 1, 2000, and must not be used for wage increases implemented before that date;

2) and 2.0 percent of all other operating costs.

A facility's most recent cost report submitted for desk audit will be used to calculate the adjustment.

(c) To receive the operating payment rate adjustment, a facility must apply to the Department. The application must contain a plan by which the facility will distribute the compensation-related portion of the payment rate adjustment to employees of the nursing facility. For a facility in which the employees are represented by an exclusive bargaining representative, an agreement negotiated and agreed to by the employer and the exclusive bargaining representative constitutes the plan only if the agreement is finalized after May 16, 2000.

1) The Department will review the plan to ensure that the payment rate adjustment is used as provided in unit (b).

2) To be eligible, a facility must submit its plan for the payment rate adjustment by December 31, 2000. If a facility's plan for the payment rate adjustment is effective for its employees after October 1 of the year that the funds are available, the payment rate adjustment shall be effective the same date as its plan.

(d) The Department will determine the payment rate adjustment using the categories listed above multiplied by the rate increases in unit (b), divided by the facility's actual resident days.

(5) Effective July 1, 2001, the Department will make an adjustment to the operating payment rate of 3.5 percent for a facility that submits a plan, approved by the Department. Of this adjustment, two-thirds must be used in accordance with unit (a) and one-third must be used for operating costs.

(a) Two-thirds of the adjustment must be used to increase the wages and benefits and pay associated costs of all employees except administrative and central office employees, provided that this increase is used only for wage and benefit increases implemented on or after July 1, 2001.

(b) For each facility, the Department will make available an adjustment by multiplying 3.5 percent by the total payment rate in effect on June 30, 2001, excluding the property-related payment rate.

(c) The application for the rate adjustment must contain a plan by which the facility will distribute the adjustment in unit (a) to employees of the facility. For a facility in which the employees are represented by an exclusive bargaining representative, an agreement negotiated and agreed to by the employer and the exclusive bargaining representative constitutes the plan only if the agreement is finalized after June 30, 2001.

1) The Department will review the plan to ensure that the payment rate adjustment per diem is used as provided in this subitem.

2) To be eligible, a facility must submit its plan for the rate adjustment by March 31, 2002. If a facility's plan for the payment rate adjustment is effective for its employees after July 1, 2001, the payment rate adjustment is effective the same date as its plan.

(d) A facility that has payment rate governed by closure agreements or receivership agreements cannot receive an adjustment.

(6) Effective July 1, 2002, the Department will make an adjustment to the operating payment rate of 3.5 percent for a facility that submits a plan, approved by the Department. Of this adjustment, two-thirds must be used in accordance with unit (a) and one-third must be used for operating costs.

(a) Two-thirds of the adjustment must be used to increase the wages and benefits and pay associated costs of all employees except administrative and central office employees, provided that this increase is used only for wage and benefit increases implemented on or after July 1, 2002.